

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

ADIDAS AMERICA, INC., an Oregon
corporation; **ADIDAS AG**, a foreign entity;
ADIDAS INTERNATIONAL
MARKETING B.V., a foreign entity,

Case No. 3:17-cv-00377-YY

OPINION AND ORDER

Plaintiffs,

v.

FOREVER 21 INC., a Delaware
corporation,

Defendant.

MOSMAN, J.,

On March 22, 2018, Magistrate Judge Youlee Yim You issued her Findings and Recommendation (F&R) [181], recommending that Plaintiffs' Motion for Judgment on the Pleadings [58] should be GRANTED. Defendant Forever 21 objected [188], but later withdrew its objections [194]. No response was filed.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

The F&R recommended the Court grant Plaintiffs' Motion for Judgment on the Pleadings as to: (1) Forever 21's fifth affirmative defense of unclean hands; and (2) Forever 21's fourth counterclaim for cancellation of a trademark registration. F&R [181]. Forever 21 objected only to the F&R's recommendation on the fourth counterclaim, but withdrew its objections after Judge You granted Forever 21's unopposed motion for leave to amend the fourth counterclaim. [189, 190].

Upon review, I agree with Judge You's recommendation as to Forever 21's unclean hands affirmative defense, and I ADOPT that section of the F&R as my own opinion. However, the section of the F&R that addresses Forever 21's fourth counterclaim is now moot, since Forever 21 amended its counterclaim. I therefore decline to adopt that section of the F&R. For these reasons, I ADOPT IN PART the F&R. [181]. Plaintiffs' Motion for Judgment on the

Pleadings [58] is GRANTED as to Forever 21's fifth affirmative defense of unclean hands and DENIED AS MOOT as to Forever 21's fourth counterclaim for cancellation of a trademark registration.

IT IS SO ORDERED.

DATED this 10th day of April, 2018.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
Chief United States District Judge